HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION Nos.1371 & 2629 of 2005
AND
TREVC.Nos.144, 145, 146, 147 & 148 of 2004

Date: 09-04-2007.

Between :

M/s.Gowtham Residential Junior College,
Gudavally, Vijayawada & others.

.....Petitioners

And

The Commercial Tax Officer, Benz Circle, Vijayawada & others.

.....Respondents.

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COMMON ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

These writ petitions and revisions raise same questions of law and fact and therefore, they are being disposed of by this common judgment.

Heard learned counsel for the parties and perused the record. Counter has been filed.

The controversy is in a very short compass. All the petitioners are private educational institutions and all of these institutions are running hostels for providing boarding and lodging facilities to the inmates of the educational institutions. The purchases of foodstuffs made from unregistered dealers and supplied to the students as food, have been assessed under Section 6-A of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as 'the Act'). The matter went up to

the Sales Tax Appellate Tribunal (for short 'the Tribunal'). The Tribunal also decided in favour of Revenue. Therefore, these writ petitions and the revisions.

The learned counsel for petitioners submit that as a matter of fact, the primary object of these educational institutions is to impart education to the students and education cannot be imparted to the students if arrangements for their food are not made by the petitioner-institutions and therefore, it is necessary to have hostels for providing food to the students. It is further submitted that the institutions are not engaged in any business activity within the meaning of the definition 'business' under Section 2(1)(bbb) of the Act, which reads as under —

> *" **'Business'** includes,*
>
> *(i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture whether or not such trade, commerce, manufacture, adventure or concern is carried on or undertaken with a motive to make gain or profit and whether or not any gain or profit accrues therefrom; and*
>
> *(ii) any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern; and*
>
> (iii) *any transaction in connection with or incidental or ancillary to the commencement or closure of such trade, commerce, manufacture, adventure or concern."*

Whether a particular activity is business activity or not, has received the attention of various Courts and there are several judgments on which the petitioners have relied. One of the judgments, which appears to have been approved also by the Supreme Court, is a judgment from Allahabad High Court in **The Indian Institute of Technology v. State of U.P.**[1]. The facts of this case were better for Revenue than the facts in the present case. In the case before the Allahabad High Court, the Indian Institute of Technology, Kalyanpur was maintaining a hostel for the scholars, who would come for a brief period to the institute for the purpose of research. This hostel was also available to the friends and relatives of the students of the Institute of Technology. The food being supplied there was assessed to Sales Tax. The High Court of Allahabad, considering the rival arguments and the judgments placed before it, came to the conclusion—

> *"The distinction laid down in the aforesaid decisions between a case, on the one hand, where the principal activity of an institution is doing business in a commercial way, and, on the other hand, a case where its principal activity is predominantly academic or charitable and an activity which may appear to have some incidents of business is only minor, subsidiary and incidental to the principal activity and is an integral part of it, is apposite and affords valuable guidance.*
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> *Reverting to the facts of the instant case, it is clear that the petitioner is essentially a residential institution where all students, research scholars and*

research fellows have to reside in the halls of residence and hostels built by the Institute and, in that connection, it has to supply foodstuffs to the inmates of the hostels as also incidentally to the relatives of the inmates and other persons who come and stay in the hostel in connection with the activities of the Institute. It is further clear from annexure H to the writ petition that the charges for foodstuffs are paid to the petitioner on the basis of fixed fee for tea, breakfast, lunch and dinner, which has no relationship to the actual quality or quantity of the foodstuffs consumed. Accordingly, it cannot be said that the petitioner's principal activity is doing business in a commercial way of buying and selling foodstuffs. On the other hand, it is apparent that the principal activity of the petitioner is predominantly academic and the supply of foodstuffs in the manner stated above is minor, subsidiary and incidental to the principal activity and is an integral part of its academic activity. Consequently, the petitioner cannot be dubbed as a "dealer" within the meaning of section 2(c) of the U.P.Sales Tax Act. The Sales Tax Officer had accordingly no jurisdiction to initiate proceedings for levy of sales tax on the petitioner."

In a judgment in **State of Tamil Nadu v. Board of Trustees of the Port of Madras**[2], the Supreme Court was considering a controversy with regard to the activity of Port Trust of Madras of selling the unserviceable goods. The Supreme Court, in this case also, came to the conclusion that the main and predominant activity of the Port Trust was not business. Therefore, its activity of selling the unserviceable goods could not be termed as carrying on business within the meaning of the definition of "carrying on business". The Supreme Court, while

approving the observations of the High Court of Andhra Pradesh in **Repair Organisation v. State of Andhra Pradesh**[3], quoted the following observations of the High Court of Andhra Pradesh with approval;

> *"We must make it clear that there is a definite distinction between an activity which is ancillary or incidental to the main activity, and an activity which is an integral part of the main activity. In the first case, the incidental or ancillary activity is a distinct activity, though it is incidental or ancillary to the main activity."*

Similarly, in **Commissioner of Sales Tax v. Sai Publication Fund**[4], the Supreme Court laid down the same principles that are laid down by the judgments referred to above. In this case, the Saibaba Trust of Shiridi was printing pamphlets containing messages of Saibaba and those pamphlets were being made available to the devotees on nominal charges. The Supreme Court held that the Trust was neither the dealer nor it was doing any activity which could be a business activity within the definition of the Sales Tax Act of Bombay.

In a judgment of Madras High Court in **Dy.Commissioner (CT) v. South India Textile Research Association**[5], purchasing of cotton and selling cotton yarn/cotton waste resulting from the research activities undertaken by South India Textile Research Association was construed as exclusively a research activity but not a business activity and the sales and purchases could not

be subjected to sales tax.

Same principles were laid down in another Division-Bench-Judgment of this Court in **Visakhapatnam Port Trust v. Commercial Tax Officer**[6].

In view of these judgments, we have no doubt in our mind that purchasing of food items by the petitioners and supplying them to the students in the hostels could not be taxed under the Sales Tax Act. It appears that the Tribunal, in its order, had appreciated the law on the subject, but had misdirected itself, because it was under the impression that imparting of education and running of educational institutions could, in certain circumstances, be a commercial activity. It is also contended by the learned Government Pleader that these institutions are running the schools after collecting huge amounts from the students and as such are not doing any activity which is not commercial. We do not have facts before us as to how much fee is being charged from each student by each school, but so far, the law in this country treats imparting of education as a non-commercial activity and in this case, reliance can be placed on a judgment of Supreme Court in **The University of Delhi v. Ram Nath**[7]. In para 6 of this judgment, the Supreme Court held,

> *"It may be legitimate to observe that it is not surprising that the Act should have excluded education from its scope, because the*

distinctive purpose and object of education would make it very difficult to assimilate it to the position of any trade, business…"

For these reasons, we allow the writ petitions as well as the revision cases and set aside the orders impugned. No order as to costs.

BILAL NAZKI, J

9th April 2007

NOOTY RAMAMOHANA RAO, J

ajr

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[1] 38 STC 428

[2] 114 STC 520

[3] [1983] 53 STC 223

[4] 126 STC 288

[5] 41 STC 197

[6] 127 STC 393

[7] AIR 1963 SC 1873